(19,310.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 235.

SAMUEL M. CLYATT

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the fifth circuit	1	1
Statement of the case	1	1
Indictment	1	1
Plea and verdict	2	2
Motion in arrest	3	2
Order overruling motion in arrest	3	3
Judgment	3	3
Assignment of errors	4	3
Questions certified	5	4
Clerk's certificate	7	4

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1904.

1 Filed March 29, 1904. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

SAMUEL M. CLYATT, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error. } No. 1151.

Error to the circuit court of the United States for the northern district of Florida.

Before Shelby, circuit judge, and Maxey and Jones, district judges.

Statement of the Case.

On November 21, 1901, at a term of the United States circuit court for the northern district of Florida, the grand jury of that court, duly sworn and organized, found and presented the following indictment:

"In the Circuit Court of the United States for the Northern District of Florida, in the Fifth Judicial Circuit.

"The grand jurors of the United States of America, empaneled and sworn within and for the district aforesaid, on their oaths present, that one, Samuel M. Clyatt, heretofore, to-wit: on the eleventh day of February, in the year of our Lord, one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid, and within the jurisdiction of this court, did, then and there, unlawfully and knowingly return one, Will Gordon and one Mose Ridley to a condition of peonage by forcibly and against the will of them, the said Will Gordon and the said Mose Ridley returning them the said Will Gordon and Mose Ridley to
work to and for Samuel M. Clyatt, D. T. Clyatt and H. H.
2 Tift, co-partners doing business under the firm name and style of Clyatt and Tift, to be held by them the said Clyatt & Tift to work out a debt claimed to be due to them, the said Clyatt & Tift, by the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

"2nd. And the grand jurors aforesaid, on their oaths aforesaid, do further present, that one, Samuel M. Clyatt, heretofore, towit: on the eleventh day of February, in the year of our Lord, one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid and within the jurisdiction of this court, did, then and there, unlawfully and knowingly cause and

aid to be returned Will Gordon and Mose Ridley to a condition of peonage, by forcibly and against the will of them, the said Will Gordon and Mose Ridley, causing and aiding them the said Will Gordon and Mose Ridley to be returned to work to and for Samuel M. Clyatt, D. T. Clyatt and H. H. Tift, co-partners doing business under the firm name and style of Clyatt & Tift to work out a debt claimed to be due to them the said Clyatt & Tift by them, the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

"JOHN EAGAN,
United States Attorney."

"Indorsements: A true bill, Edward B. Eppes, foreman."

The defendant, Samuel M. Clyatt, was brought to the bar, and after hearing the indictment read, pleaded "Not guilty." Whereupon, a jury was duly empaneled, and after hearing the evidence, argument of counsel and charges of the court, returned the following verdict: "We, the jury, find the defendant guilty, so say we all." Whereupon, the defendant Samuel M. Clyatt was remanded to jail to await the further order of the court.

After verdict, and before sentence, the defendant, by his attorneys, moved the court to arrest the judgment, and that he be dis-
3 charged and allowed to go without delay, on the following grounds:

"1st. That the statute under which this indictment is found, to-wit: section 1990 and 5526 of the Revised Statutes of the United States, do not apply to the charges made against this defendant in the indictment or to the evidence in support of the same.

"2nd. That there was no proof whatever of any peonage previous to, or subsequent to the finding of the indictment, on Mose Ridley or Will Gordon inflicted or caused to be inflicted by this defendant, supporting the offense of peonage as charged in this indictment.

"3rd. That the offense of peonage as defined in the statute and the punishment therefor as defined and provided in the sections 1990 and 5526 of the Revised Statutes of the United States, if constitutional, which is denied, was never made applicable to the fact stated and proven in the indictment and such offenses as were proven are cognizable only in the State courts, no Federal jurisdiction appears in this cause.

"4th. No system of peonage is charged or proven to have been in evidence within this jurisdiction.

"5th. The proof of an existing custom not charged in the indictment to exist in Levy county, Florida, or in any other locality, could not supply the absence of any proof as to the return of Gordon and Ridley to a condition of involuntary servitude."

After hearing the motion, the circuit court made the following

order: "The United States *vs.* Samuel M. Clyatt. Peonage. "The motion in arrest of judgment by the defendant is hereby overruled."

And, thereupon, on March 27, 1902, the circuit court entered the following judgment: "The United States *vs.* Samuel M. Clyatt. Indictment, violation section 5526 Rev. Statutes of U. S.

"And now at this time came the United States, by John Eagan, United States district attorney for the northern district of Florida, who prayed the judgment of the court upon one Samuel M.
4 Clyatt, heretofore convicted before this court of a violation of section 5526 of the Revised Statutes of the United States, and the said defendant being brought into court, and the court being fully advised in the premises, ordered the said defendant to the bar of the court and imposed the following sentence:

"It is ordered and adjudged that the said defendant, Samuel M. Clyatt be taken hence to the Federal penitentiary at Atlanta, in the State of Georgia, and there confined at hard labor for the full term and period of four years from the 27th day of March, A. D. 1902, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law."

And afterwards, on March 27, 1902, defendant Samuel *R.* Clyatt by his attorney, duly applied for and obtained a writ of error to the United States circuit court of appeals for the fifth circuit, and made the following assignment of errors:

"Comes now the defendant, Samuel M. Clyatt, and makes the following assignment of errors:

"1. The court erred in overruling the motion of defendant for the arrest of the judgment in this cause upon the several grounds alleged therein.

* * * * * * *

"3. Sections 1990 and 5526 of the Revised Statutes of the United States, under which the defendant was tried and convicted, are not applicable to this case. There is no allegation or proof of the existence of any system of peonage anywhere in the States of Florida or Georgia.

"4. There is no allegation that any act, law resolution, orders, regulations or usages, which had been before established, maintained or enforced, is charged in the indictment or that by virtue of any of these an attempt has been made in this case to establish, maintain, and enforce, directly or indirectly, the voluntary or involuntary service or labor of any person as peons in liquidation of any debt or obligation, or otherwise, and there is no proof against
5 this defendant of having done so, or of having assisted in the arrest or return of Gordon and Ridley to any condition of peonage.

"5. The statutes were made and intended to be applied to a system in existence in the Territory of New Mexico and not extended to any State wherein the system then existing in New Mexico did not obtain."

Thereafter the circuit court made an order granting the defendant leave to file a supersedeas bond in said cause. The bond was duly filed and approved.

This cause having come on for hearing in this court, was argued by the attorneys for the plaintiff in error and by attorneys for the United States; whereupon, this court, desiring the instruction of the honorable Supreme Court of the United States for proper decision of the matters pending, certifies to said Supreme Court the following questions, to-wit:

1. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States?

2. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States when at the time of the arrest and return of such person, there existed in the State to which he was returned to be so held no statute of the State or usage therein creating or sanctioning peonage or a system of peonage.

3. Do the acts and conduct of the defendant as charged in the indictment constitute the offence of holding, arresting or returning to a condition of peonage within the purview of sec. 5526
6 of the Revised Statutes?

For further certainty and information a printed copy of the transcript is transmitted with this certificate.

7 United States Circuit Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA, *Fifth Judicial Circuit,* } ss:

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing statement of facts and certificate in the case of Samuel M. Clyatt, plaintiff in error, *versus* The United States, defendant in error, No. 1151 on the docket of said court was duly filed and entered of record in my office by order of said court, and as directed by said court, the certificate is by me forwarded to the Supreme Court of the United States for its action thereon;

And I further certify that accompanying this is a printed copy of the record in said case, which I have identified by endorsing thereon and signing officially as follows; to-wit: "Identified as a printed copy of the record in No. 1151, Samuel M. Clyatt *vs.* The United States."

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at the city of New Orleans, Louisiana, this April 1, 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals
for the Fifth Circuit.

Endorsed on cover: (Certificate.) File No. 19,310. U. S. C. C. of appeals, 5th circuit. Term No. 235. Samuel M. Clyatt *vs.* The United States. Filed April 26th, 1904. File No. 19,310.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 235.

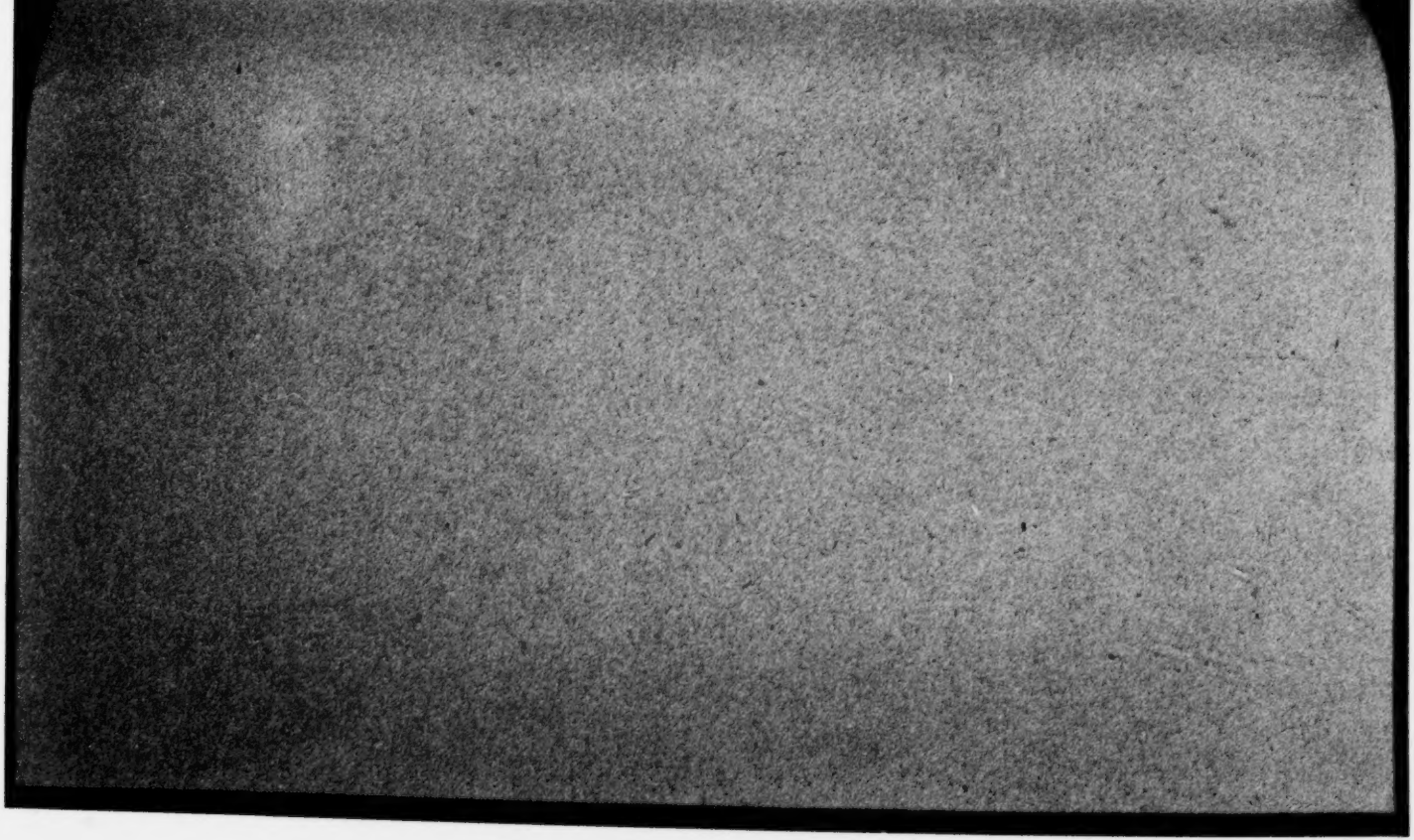
SAMUEL M. CLYATT, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

TRANSCRIPT OF RECORD ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT TO BRING UP WHOLE RECORD AND CAUSE.

(19,310.)



(19,310.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 659.

SAMUEL M. CLYATT, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

INDEX.

	Page.
Caption	1
Order of commissioner	2
Indictment	3
Verdict and order of commitment	4
Motion for new trial	5
Motion in arrest of judgment	6
Order overruling above motions	7
Sentence	7
Order as to filing bill of exceptions	8
Petition for writ of error	8
Assignment of errors	9
Order as to supersedeas bond	10
Bond	10
Bill of exceptions	11
Testimony of J. R. Dean for plaintiff	11
H. S. Sutton for plaintiff	13
W. E. Yearty	14
E. T. Ford for plaintiff	15
Citation and service	20
Writ of error	20
Clerk's certificate	21
Order designating judges	21
Argument in part	22
Submission	22
Order	22
Statement and questions certified	23
Clerk's certificate	27

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 25, 1904. 10971

Transcript of Record.

United States Circuit Court of Appeals, Fifth Circuit.

SAMUEL M. CLYATT, Plaintiff in Error,
versus
THE UNITED STATES, Defendant in Error. } No. 1151.

Error to the United States circuit court for the northern district of Florida.

(Original record filed April 21, 1902.)

Caption.

UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1903, and held in the court room of said court, in the city of New Orleans, before the Honorable David D. Shelby, United States circuit judge for the fifth judicial circuit; the Honorable Thomas S. Maxey, United States district judge for the western district of Texas, and the Honorable Thomas G. Jones, United States district judge for the northern and middle districts of Alabama.

SAMUEL M. CLYATT, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error. } No. 1151.

Be it remembered that heretofore to-wit: on the 21st day of April, 1902, a transcript of the record of the above styled cause from the circuit court of the United States for the northern district of Florida, was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following, to-wit:

In the United States Circuit Court, Northern District of Florida.

Be it remembered, that on the 29th day of May, A. D. 1901, one S. M. Clyatt being under arrest as a prisoner of the United States, charged before the Honorable Fred Cubberly, a commissioner of the United States in and for said district, residing at Bronson, State of Florida, with having violated section 5526 of the Revised Statutes of the United States and having had a hearing according to law, before the said commissioner, was, by said commissioner, bound over to appear and answer said charge before the United States circuit court

for the northern district of Florida, holding a session at Tallahassee, which order was in writing and is in the words and figures following, to-wit:

THE UNITED STATES
versus
S. M. CLYATT.

Violation of section 5526, R. S. U. S.

Whereas, the above named defendant, S. M. Clyatt, having had a hearing before me this 29th day of May, A. D. 1901,

And, whereas, there appearing from the evidence to be probable cause therefor,

It is ordered that the said defendant, S. M. Clyatt, be held in $500.00 bail, to be and appear to answer said charge at the next term of the United States circuit court for the northern district of Florida, held at Tallahassee, on the first day of next term, A. D. 1901, and in default thereof to be remanded to the custody of —.

FRED CUBBERLY,
U. S. Commissioner.

(Indorsements:) The United States *vs.* S. M. Clyatt. Order of commissioner. Filed July 27th, 1901. F. W. Marsh, clerk, per W. C. Hodges, D. C.

And afterwards, to-wit: on the twenty-first day of November, in the year of our Lord, one thousand nine hundred and one, at a term of the United States circuit court in and for the northern district of Florida, a grand jury of said court, duly empaneled and sworn according to law, and organized and in session, came into court and made a presentment, which was entered upon the minutes of said court and is in the words and figures following, to-wit:

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. 116.

Indictment, violation section 5526 R. S. A true bill.

EDWARD B. EPPES, *Foreman.*

The indictment which the aforesaid grand jury presented as aforesaid, was filed by the clerk on said day and entered upon the records of said court, and is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, in the Fifth Judicial Circuit.

At an adjourned term of the circuit court of the United States for the northern district of Florida, in the fifth circuit, begun and held

at the city of Tallahassee, within and for the district aforesaid, on the nineteenth day of November, in the year of our Lord, one thousand nine hundred and one.

NORTHERN DISTRICT OF FLORIDA, *ss*:

The grand jurors of the United States of America, empaneled and sworn within and for the district aforesaid, on their oaths present, that one, Samuel M. Clyatt, heretofore, to-wit: on the eleventh day of February, in the year of our Lord, one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid, and within the jurisdiction of this court, did, then and there, unlawfully and knowingly return one, Will Gordon and one Mose Ridley to a condition of peonage, by forcibly and against the will of them, the said Will Gordon and the said Mose Ridley returning them the said Will Gordon and Mose Ridley to work to and for Samuel M. Clyatt, D. T. Clyatt, and H. H. Tift, copartners doing business under the firm name and style of Clyatt and Tift, to be held by them the said Clyatt & Tift to work out a debt claimed to be due to them, the said Clyatt & Tift, by the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

2nd. And the grand jurors aforesaid, on their oaths aforesaid, do further present, that one, Samuel M. Clyatt, heretofore, to-wit: on the eleventh day of February, in the year of our Lord, one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid and within the jurisdiction of this court, did, then and there, unlawfully and knowingly cause and aid to be returned Will Gordon and Mose Ridley to a condition of peonage, by forcibly and against the will of them, the said Will Gordon and Mose Ridley, causing and aiding them the said Will Gordon and Mose Ridley to be returned to work to and for Samuel M. Clyatt, D. T. Clyatt and H. H. Tift, co-partners doing business under the firm name and style of Clyatt & Tift to work out a debt claimed to be due to them the said Clyatt & Tift by them, the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

JOHN EAGAN,
United States Attorney.

(Indorsements:) No. 116. United States circuit court, northern district of Florida. The United States *vs.* Samuel M. Clyatt. Indictment. Vio. sec. 5526 R. S. U. S. A true bill, Edward B. Eppes, foreman. Witnesses: Wm. E. Yearty, J. R. Dean, H. S. Sutton, Ed. P. Ford. Filed November 21st, 1801. F. W. Marsh, clerk. John Eagan, U. S. attorney.

At a stated term of the circuit court of the United States for the northern district of Florida, begun and held at the city of Tallahassee, on the 21st day of November, A. D. 1901, the following proceedings were had in open court, to-wit:

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. 116.

Indictment: Violation section 5526, Rev. Statutes of U. S.

And now at this time the grand jury of the United States came into court and presented the foregoing indictment, indorsed "A true bill, Edward B. Eppes, foreman."

And afterwards, on the 25th of March, A. D. 1902, the following proceedings were had in open court:

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. 116.

Indictment: Violation section 5526, Rev. Statutes of U. S.

And now at this time came the United States by John Eagan, United States district attorney for the northern district of Florida, and prayed that the defendant, Samuel M. Clyatt, be arraigned upon said indictment for having violated section 5526 of the Revised Statutes of the United States.

Whereupon, said defendant was ordered to appear and answer the charge in said indictment preferred.

And the said defendant, being in court, was brought to the bar, and after hearing the said indictment read, pleaded not guilty.

Whereupon said cause was called for trial, and upon motion of the respective parties, the following jury was called, to-wit:

1. J. B. Bozeman,
2. John Parramore,
3. Lynn Kilburn,
4. J. B. Switzer,
5. W. C. Durham,
6. T. J. Allen,
7. F. J. Egbert,
8. G. W. Houston,
9. B. W. Rogers,
10. H. G. Land,
11. J. D. Johnson,
12. A. C. Grissett,

who being duly chosen, tried and sworn, and after hearing the evidence, argument, and counsel and charges of the court, retired to consider of their verdict, and after due consideration, came into court and presented the following verdict, to-wit:

"We the jury, find the defendant guilty, so say we all.
(Signed) W. C. DURHAM, *Foreman.*"

Whereupon, the court not being fully advised in the premises, ordered that the said defendant, Samuel M. Clyatt, be remanded to

the custody of the keeper of the Leon county jail, Florida, to await the further order of the court in the premises.

And afterwards, to-wit: on the twenty-sixth day of March, A. D. 1902, came the defendant, Samuel M. Clyatt, and entered up-n the motion docket of said court the following motion, to-wit:

In the United States Circuit Court, Northern District of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. 116. Peonage.

Comes now on this 26th day of March, 1902, the defendant, Samuel M. Clyatt, who on yesterday was convicted of the offence charged in the indictment for the above offense, and moves the court for a new trial and argues the following reasons therefor:

1st. That the verdict was contrary to the evidence.

2nd. Was contrary to the weight of evidence.

3rd. That the verdict was without evidence to support the same.

4th. That the statute, to-wit: sec. 1990, of the Revised Statutes of the United States, was not applicable to the facts as testified to in this case.

5th. That there was no proof that the named Will Gordon and Mose Ridley prior to the time alleged in the said indictment, to-wit: on the 11th day of February, 1901, had ever been held to service under the system known as peonage, or that they or either of them had before then or ever afterwards been held to service under the system by the acts or connivance of this defendant.

6th. There is no proof that the above Gordon or Ridley, or either of them, were ever by this defendant subjected to either voluntary or involuntary service or labor as peons in liquidation of any debt or obligation in any manner by this defendant.

7th. That the court erred in holding that the defendant was liable for or on any account under the statute.

8th. That the court erred in allowing testimony as to the custom generally by others engaged in the same business, to-wit: the manufacture of naval stores, to compel laborers to return to their service in liquidation of pre-existing debts.

9th. That the court erred in permitting the United States attorney to discredit his own witnesses as in allowing him to prove that the firm of Clyatt and Tift embraced also this defendant.

10th. That the court also erred in permitting evidence that it was not the intention of the deputy sheriff, Yearty, to have taken his prisoners, Will Gordon and Mose Ridley, to the county jail at Bronson to be dealt with under the warrant held by him for their arrest and that he would have done so, but for their voluntary election to return with the defendant to the town out of which the warrant issued, charging them with the offenses of gaming or larceny or one or both.

11th. That there is no evidence whatever that the said Will Gordon or Mose Ridley or either of them ever returned to service with this defendant or upon any service with which he was connected.

12th. That the proof is in no way confined to the indictment.

HENDERSON AND HENDERSON AND
C. W. FULWOOD,
Att'ys for Samuel M. Clyatt, the Defendant.

And afterwards, to-wit: on the 27th day of March, A. D. 1902, the following motion was also entered upon the motion docket of said court, to-wit:

In the United States Circuit —, Northern District of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT.

Now comes the defendant, after verdict and before sentence, by his attorneys, and moves the court to arrest the judgment in this cause and that he be discharged and allowed to go without day on the following grounds, to-wit:

1st. That the statute under which this indictment is found, to-wit: section- 1990 and 5526 of the Revised Statutes of the United States, do not apply to the charges made against this defendant in the indictment or to the evidence in support of the same.

2nd. That there was no proof whatever of any peonage previous to or subsequent to the finding of the indictment, on Mose Ridley or Will Gordon inflicted or caused to be inflicted by this defendant, supporting the offense of peonage as charged in this indictment.

3rd. That the offense of peonage as defined in the statute and the punishment therefor as defined and provided in the sections 1990 and 5526 of the Revised Statutes of the United States, if constitutional, which is denied, was never made applicable to the fact stated and proven in the indictment and such offenses as were proven are cognizable only in the State courts, no Federal jurisdiction appears in this cause.

4th. No system of peonage is charged or proven to have been in evidence within this jurisdiction.

5th. The proof of an existing custom not charged in the indictment to exist in Levy county, Florida, or in any other locality, could not supply the absence of any proof as to the return of Gordon and Ridley to a condition of involuntary servitude.

Wherefore, this defendant prays for the reasons apparent in the record that such judgment be arrested.

HENDERSON AND HENDERSON AND
C. W. FULWOOD,
Attorneys for Samuel M. Clyatt, the Defendant.

March 27th, 1902.

And on the same day, to-wit: on the 27th day of March, A. D. 1902, the following orders overruling the said motions were made and entered of record in the above entitled cause, to-wit:

In the Circuit Court of the United States, Fifth Circuit, Northern District of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. 116. Peonage.

The motion in arrest of judgment by the defendant is hereby overruled.

And to this ruling the defendant hereby excepts and asks that this exception be noted, which is done.

In open court, sealed and signed.

CHAS. SWAYNE, *Judge.*

M'ch 27th, 1902.

Came also to be considered the motion of defendant for a new trial, and after argument of counsel is hereby overruled, to which the defendant excepts and prays that this be noted, which is done, sealed and signed in open court.

CHAS. SWAYNE, *Judge.* [SEAL.]

M'ch 27.

(Indorsements:) In U. S. court, nor. dist. of Fla. United States *vs.* Samuel M. Clyatt. Order overruling motion in arrest of judgment and order overruling motion for new trial. Filed March 27th, 1902. F. W. Marsh, clerk.

And afterwards, to-wit: on the 27th day of March, A. D. 1902, the following proceedings were had in open court, to-wit:

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. 116.

Indictment: Violation section 5526, Rev. Statutes of U. S.

And now at this time came the United States, by John Eagan, United States district attorney for the northern district of Florida, who prayed the judgment of the court upon one Samuel M. Clyatt, heretofore convicted before this court of a violation of section 5526 of the Revised Statutes of the United States, and the said defendant being brought into court, and the court being fully advised in the premises, or-ered the said defendant to the bar of the court and imposed the following sentence:

It is ordered and adjudged that the said defendant, Samuel M. Clyatt be taken hence to the Federal penitentiary at Atlanta, in the

State of Georgia, and there confined at hard labor for the full term and period of four years from the 27th day of March, A. D. 1902, and that he stand committed until the terms of this sentence be compled with, or until he be discharged by due course of law.

And afterwards, on the same day, to-wit: on the 27th day of March, A. D. 1902, the following order was made in the above entitled cause and filed with the clerk, to-wit:

In the Circuit Court of the United States, Fifth Circuit and Northern District of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT. } No. —. Peonage.

Ordered that the defendant be allowed twenty-five days from this 27th day of March, inst., for settling and having signed his bill of exceptions herein.

Done and ordered in open court, this March 27th, 1902.

CHAS. SWAYNE, *Judge.*

(Indorsements:) The U. S. C. C., N. dist. of Fla. The United States *vs.* Samuel M. Clyatt. Order extending time for settling bill of exceptions, etc. Filed March 27th, 1902. F. W. Marsh, clerk.

And afterwards, the defendant, by his attorneys, filed the following petition for a writ of error in the above entitled cause, to-wit:

In the United States Circuit Court, Fifth Circuit, Northern District of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT.

Comes now the defendant, Samuel M. Clyatt, and respectfully asks for a writ of error from the order and sentence, and the proceedings leading thereto, to his conviction in this court of the charge of the crime known as peonage on the 25th day of March, A. D. 1902. Said writ to be made returnable April 25th, 1902.

HENDERSON & HENDERSON AND
C. W. FULWOOD,
Defendant's Attorneys.

March 27th, 1902.

(Indorsements:) Circuit court of United States, northern district of Florida. United States *vs.* Samuel M. Clyatt. Petition for writ of error. Filed March 27th, 1902. F. W. Marsh, clerk.

And at the same time, to-wit: on the 27th day of March, A. D. 1902, the following assignment of errors was filed in the said cause by the defendant therein, to-wit:

In the United States Circuit Court, Fifth Circuit, Northern District of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT.

Comes now the defendant, Samuel M. Clyatt, and makes the following assignment of errors:

1. The court erred in overruling the motion of defendant for the arrest of the judgment in this cause upon the several grounds alleged therein.

2. The court erred in refusing defendant's motion for a new trial upon each and every ground alleged therein.

3. Sections 1990 and 5526 of the Revised Statutes of the United States, under which the defendant was tried and convicted, are not applicable to this case. There is no allegation or proof of the existence of any system of peonage anywhere in the States of Florida or Georgia.

4. There is no allegation that any act, law resolution, orders, regulations or usages, which had been before established, maintained or enforced, is charged in the indictment or that by virtue of any of these an attempt has been made in this case to establish, maintain, and enfore, directly or indirectly, the voluntary or involuntary service or labor of any person as peons in liquidation of any debt or obligation, or otherwise, and there is no proof against this defendant of having done so, or of having assisted in the arrest or return of Gordon and Ridley to any condition of peonage.

5. The statutes were made and intended to be applied to a system in existence in the Territory of New Mexico and not extended to any State wherein the system then existing in New Mexico did not obtain.

6. The court erred in admitting any proof as to the existence of a custom prevailing in Levy county, Florida, to take laborers by force and arms, or otherwise, and return them to labor and service in liquidation of any debt or obligation.

March 27th, 1902.

(Indorsements:) Circuit of United States, northern district of Florida. United States *vs.* Samuel M. Clyatt. Assignment of errors. Filed March 27th, 1902. F. W. Marsh, clerk.

And thereafter, the jndge of said court made and caused to be entered of record in the above entitled cause an order granting the defendant leave to file a supersedeas bond in the said cause, which order is in the words and figures following, to-wit:

In U. S. Circuit Court, 5th Circuit, Northern Dist. of Florida.

THE UNITED STATES
vs.
SAMUEL M. CLYATT.

The defendant having filed his writ of error to the circuit court of appeals from his conviction and sentence in this cause:

The order of supersedeas from the sentence herein imposed is hereby allowed, upon the filing in this court of the bond of defendant, with good and sufficient surety, in the penal sum of twenty-five hundred dollars, to be approved by the court, conditioned for the appearance of the defendant to abide the results of his writ of error and to surrender himself to this court if judgment hereof be affirmed.

Done and ordered in open court, March 27th, 1902.

CHAS. SWAYNE, *Judge.*

(Indorsements:) In U. S. Ct. Ct., N. Dist. of Fla. U. S. *vs.* Samuel M. Clyatt. Order for supersedeas. Filed March 27th, 1902. F. W. Marsh, clerk.

And thereafter, and on the same day, to-wit: on the 27th day of March, A. D. 1902, the defendant came into court and filed a supersedeas bond in pursuance of the terms of the foregoing order, which was duly approved, and is in the words and figures following, to-wit:

In the Circuit Court of the United States, Fifth Circuit, Northern District of Florida.

UNITED STATES
vs.
SAMUEL M. CLYATT.

Know all men by these presents, that we, Samuel M. Clyatt, as principal, and Julius Diamond, L. C. Yaeger and John A. Henderson are held and firmly bound unto the United States of America in the full and just sum of twenty-five hundred dollars, to which payment, well and truly to be made, we bind ourselves, heirs, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of March, A. D. 1902.

Whereas, lately at the spring term, A. D. 1902, of the circuit court of the United States, fifth circuit, northern district of Florida, in a suit pending in said court between The United States of America, plaintiff, and Samuel M. Clyatt, defendant, a judgment and sentence was rendered against the said Samuel M. Clyatt, and the said Samuel M. Clyatt has obtained a writ of error from the United States circuit court of appeals for the fifth circuit to reverse the judgment and sentence in the aforesaid suit, and citation directed to the said United States of America citing and admonishing the United States

of America to be and appear in the United States circuit court of appeals for the fifth circuit, at the city of New Orleans, Louisiana, thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said Samuel M. Clyatt shall be and appear at Tallahassee and shall abide by and obey all orders made by said United States circuit court of appeals for the fifth circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said court may direct, if the judgment and sentence of the said circuit court against him shall be affirmed by the said United States circuit court of appeals for the fifth circuit, then the above obligation be void; else to remain in full force, virtue and effect.

S. M. CLYATT. [SEAL.]
JULIUS DIAMOND. [SEAL.]
L. C. YEAGER. [SEAL.]
JOHN A. HENDERSON. [SEAL.]

Approved:
CHAS. SWAYNE,
Judge of the U. S. Circuit Court, Fifth Circuit, Northern District of Florida.

(Indorsements:) The United States *vs.* S. M. Clyatt. Supersedeas bond. Filed March 27th, 1902. F. W. Marsh, clerk.

And afterwards, to-wit: on the seventeenth day of April, A. D. 1902, the defendant in the above entitled cause, by his attorneys, filed his bill of exceptions in the said cause, which remains of record and is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the Northern District of Florida.

Be it remembered, that at a term of the United States circuit court in and for the northern district of Florida, held at Tallahassee, Florida, on the 24th day of March, in the year of our Lord one thousand nine hundred and two, a cause therein pending, wherein The United States was plaintiff, and Samuel M. Clyatt was defendant, came on to be heard before the Honorable Charles Swayne, judge of said court, on which date came the said parties and their respective attorneys.

And thereupon the said issue in manner aforesaid joined between the said parties, came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the issues in manner aforesaid joined.

And thereupon the plaintiff to maintain the issues upon its part, produced and offered as a witness JAMES R. DEAN, who being first duly sworn, did testify as follows:

I live in Alachua county, Florida. I lived in Levy county last year. I know Mr. Clyatt, the defendant, but am not well acquainted with him. Both Will Gordon and Moses Ridley, colored men, were working for me making turpentine in February, 1901. I have been engaged in making turpentine and naval stores for seventeen years, two years in Florida, and fifteen years in Georgia. I don't know where the two men Gordon and Ridley are; have not seen them since Mr. Clyatt carried them away. Mr. Yearty, deputy sheriff, came to my house at my still in Levy county, Florida, on the night of the — day of February, A. D. 1901, and called me up about four o'clock in the morning. He told me that Mr. Clyatt was with him, and that he had five warrants for some turpentine hands on my place, and told me their names. He told me that Clyatt was at the foot of the sand hills about four or five hundred yards from my house. I told him that I had been sick and did not want to go out, but finally went with Yearty to where Clyatt was. Before I went over there Yearty showed me the warrants. I told him that one of the men was not on my place, the other four were. When I got to where Clyatt was, I told him that the man by the name of Hackett was not there—the other four were. He told me they owed him. We went then to my commissary, up nearer my house. I paid Clyatt the amount he had against two of the men, which he took, and I offered to pay him his charges against Gordon and Ridley, which he said was about nineteen dollars for one, and eight or nine dollars for the other. He refused to let me pay their indebtedness, and they were arrested. He said he wanted to carry them back to Georgia and make an example of them. Mr. Clyatt had along with him Mr. Taylor and Mr. Ford. They all came from Georgia with him. They were all armed with guns. Clyatt said the warrants under which the arrests of Gordon and Ridley were made were for gaming. Though I saw the warrants I did not read them. The deputy sheriff, Yearty, handcuffed the two men and carried them off. The men both protested against going. One of them refused to put his hand in the cuff, and Mr. Clyatt threw his gun on him and made him put his hand in. This was about daybreak. Clyatt settled with me for the amount of my bills against Gordon and Ridley, about eighteen or twenty dollars for both. They put the men in a buggy with the deputy sheriff and the driver and left my place, Clyatt, Ford and Taylor following the team. One of the colored men said he did not owe him and did not want to have to go. Gordon protested. Clyatt said, I reckon you will go, and threw *him* gun on him. I have had men go off from me owing me and I always found them and they paid me.

Question by PLAINTIFF'S ATTORNEY: "Mr. Dean, is it a general custom among turpentine men to swear out warrants for hands when they go away owing debts, and have them arrested and returned?"

Question objected to by defendant's attorney on the ground that such a custom is not alleged in the indictment and is irrelevant.

Objection was overruled and exception taken by defendant's attorney.

Answer. "I do not know of the custom to swear out warrants. I never took out warrants myself.

I heard that Gordon and Ridley were at Waterloo, Georgia, soon after they were taken from my place. The defendant said that was his place of business. I saw letter soon after the men were taken from my place. Don't know the handwriting—it had same heading and printing on it as this letter. (Being letter-head introduced in evidence during examination of E. P. Ford.) I do not know where Gordon and Ridley, the two negroes that were taken from my place are now. I have never seen them since. Their trunks and some clothes and bedding were left at my place and are still there. I never saw Clyatt, the defendant, or Ford, or Taylor, the men who were with him, before. I never had any trouble with them.

The plaintiff then introduced and offered as a witness, H. S. SUTTON, who being first duly sworn, did testify as follows:

I am the sheriff of Levy county, Florida—been such for four years—am in my fifth year now. I know the defendant, Clyatt. He has lived in Levy county, but he now lives in Georgia. He was not living in Levy county in February, 1901. He was engaged in the turpentine and naval stores business in this county, but went to Georgia, about six years ago. Clyatt came to see me in February, 1901, at Bronson; showed me some warrants and wanted me to execute them for him on some darkies. He found me at the train by accident and showed me his papers. It was the usual custom to take these papers and get a settlement. I told him that I could not go with him, but that I would give him a note to my deputy, and I gave him a note to Mr. Yearty, deputy sheriff. Through a letter from a Mr. Tillis I was advised that Mr. Clyatt would be at Bronson by a certain date, but he did not come on that date, and I was at the train by accident. It was late in the afternoon when the train came in—about five o'clock. I told him I could not go with him that night, but gave him a note to Mr. Yearty. The warrants were sworn out and issued in Georgia by some justice of the peace or county judge, I did not know before now that I had no right to arrest anybody on such papers. I knew that to carry them into another State they had to bring extradition papers, but I did not know that would prevent their arrest and keeping the prisoners until such papers came. I had frequently served such warrants for turpentine men, and had done so for James R. Dean and have in my office now in Levy county several warrants to serve for Mr. Dean.

Question by PLAINTIFF'S ATTORNEY: Mr. Sutton, is it a general custom among turpentine men in Florida and Georgia to have negroes arrested in this way?

Objected to by defendant's attorney on the ground that no such custom is alleged in the indictment, and is irrelevant.

Which objection was overruled and exception taken by defendant's attorney.

Answer. It has been the universal custom and practice of the turpentine men in Georgia and Florida to go and take negroes whenever they wanted to in this way.

The plaintiff then produced and offered as a witness, W. E. YEARTY, who, being first duly sworn, did testify as follows:

I have lived in Levy county, where I now reside, since the winter of 1853–4. I was the deputy sheriff of Levy county in February, 1901. I have been deputy sheriff, marshal and deputy marshal, off and on for thirty odd years. I know the defendant, Clyatt. He came to the house where I was sitting up with a corpse in the fore part of the night of the — day of February, 1901, about fifteen miles from Bronson near Rocky ——, and about five miles from Dean's still. He told me that he had come to my house. Clyatt was in a carriage with the driver and Ford and another white man. This was off the railroad. Clyatt told me he had some papers, warrants, for me to serve, and a note from the sheriff, Mr. Sutton. I went with him to Dean's still. There were five warrants, but I could not make out what they were for, as I had left my spectacles at home and it was night, but I knew that they were made out by an officer in Georgia. I thought I knew they were warrants. And the two served on Gordon and Ridley were for stealing. We got to Dean's still at five o'clock in the morning, as the office clock bell was ringing. We lost our way and beat about in the woods for the long interval. The team and others stopped at the foot of the sand hills, and I went up to Mr. Dean's house and called him up and told him that I had some warrants I wanted to serve on some men at his place, and gave him their names. He said one of them was not there. I told him Mr. Clyatt came with them. He said he had been sick and did not want to come out, and asked me where Clyatt was. I told him he was at the foot of the sand hills. He put on his clothes and we went together to where Clyatt was. After some talk, we all went to Dean's commissary. Clyatt and Dean had some settlements as to the men included in two of the warrants, but Clyatt refused to take Dean's offer of settlement for the other men. Said they did not owe him anything, and that he wanted them for stealing. This occurred back in the far end of the commissary. Dean was sitting inside of the office. I took the two men with me. I put the hand-cuffs on them myself and they did not resist. One of them sort of pulled back a little, as they usually do, and I told him to put his hand in the cuff, and he did it. I did not see Mr. Clyatt throw his gun on either of them at any time. I put them in the wagon and got in with the driver. I did not see Clyatt, nor Ford, nor the other man any more until I got to the railroad station. They started on foot behind me. While we were driving along the colored men asked me what I was going to do with them. I told him I was going to take them to Bronson and put them in the county jail to be kept there until the court disposed of them. They said they did not

want to go to jail, and asked me if they could not go on to Georgia with Mr. Clyatt. I told them that was as he said, and that I would ask him when he came up. We heard the whistle of the train blow when we were approaching the station. We got out in a hurry, and just then Mr. Clyatt and his party came up in Mr. Dean's wagon. I told Mr. Clyatt that Gordon and Ridley would rather go to Georgia with him than to go to jail at Bronson, where I would certainly have carried them but for their preference to go to Georgia with Clyatt. Clyatt said that if they wanted to go along with him he was perfectly willing to carry them. They got aboard of the train. Mr. Clyatt paid me five dollars for my services in the matter. I charged him five dollars because it was a reasonable compensation for the work done, and it was about what I thought would have been the mileage for the service of the two warrants. They all got on the train, and the hand-cuffs, which I got from Mr. Clyatt at Dean's commissary, were not then removed, but were left on Gordon and Ridley. I always hand-cuff prisoners, but not having any with me I got a pair from the defendant. It has always been my practice when I make arrests to hand-cuff prisoners and not to take their word. I did not know until now that I had no right to serve warrants issued in another State. Mr. Clyatt and the other parties with him had guns. Clyatt, the defendant, furnished the hand-cuffs to put on the men.

The plaintiff then produced and offered as a witness, E. T. FORD, who, being first duly sworn, did testify as follows:

I live in Colquitt county, Georgia, and lived there in February, 1901. Waterloo is in Irvine county twelve miles southwest from Moultrie. It is about forty or fifty miles from Waterloo to my place. I know the defendant, Clyatt, he lives at Tifton, Georgia, nine or ten miles west of me. Clyatt has a place at Waterloo belonging to Clyatt & Tift. I have known Clyatt nine or ten years. He is engaged in the turpentine business. I have been in that business twelve or fifteen years in Georgia and Florida, in Levy and Baker counties, in Florida. I know the witness, James R. Dean. I worked for Clyatt & Tift—ran a still for them for a while and was a woods rider for a while. I know a firm of Clyatt & Tift; it consists of D. T. Clyatt and H. H. Tift. The defendant was not a partner in the firm of Clyatt & Tift. (The witness shown a letter-head, which he said was their letter-head, same as was introduced in evidence, which was in the words and figures as follows, to-wit:

D. T. Clyatt. S. M. Clyatt, manager. H. H. Tift.

Clyatt & Tift,
Manufacturers of naval stores and dealers in general merchandise,
Waterloo, Ga.

I know that this defendant was not a partner; but that he had the general charge and management of the business; that he hired

and discharged labor and superintended generally the business of that firm. I do not know that the defendant shared in the profits. I met Clyatt at Tifton. He said he had some darkies to look after and wanted me to go with him to Florida. I could not swear what he came for. He said he had some warrants. I came along with him. We got to Bronson four or five o'clock in the evening. I do not know what the charges were in the warrants. Clyatt showed the warrants to Sheriff Sutton, who handed them back to Clyatt with a note to Yearty, his deputy. I had a gun, so did Clyatt and one Taylor, who came with us from Georgia. I do not know how many round- of ammunition the others had. I had six or eight or a dozen cartridges. I did not know that Clyatt came to carry negroes back with him. I never knew that it required Florida warrants. I went with Clyatt and Taylor to the deputy sheriff's, and with him to Dean's place; got there just before day in the morning. I never saw Dean before that morning, and not until about day-light, when he came to where we were at the foot of the sand hills. The deputy sheriff arrested two darkies and took them to Rosewood. Did not see the darkies after we left Dean's commissary until I saw them at the railroad when we got there. They had hand-cuffs on, which is usual in the arrest of criminals. Did not know that Clyatt had hand-cuffs with him. Did not see him give the hand-cuffs to the sheriff; he had a small grip with him. I stood within fifteen or twenty feet of the cuffing. I was just inside of the one door to the house, with my gun leaning up against the side of the house. Mr. Taylor was there also with me. Clyatt and the deputy sheriff were at the other end of the commissary, fifteen or twenty feet from us. Dean was inside of his office at that end. There was no opening to the commissary. Clyatt had his gun inside with him. I saw the prisoners make no objection or any resistance. Dean was on a stool and the men outside of his office. I did not see Clyatt level the gun on either of the prisoners. A little business transaction took place between Clyatt and Dean. Dean paid Clyatt for some of the men, and one for whom he had warrant was not in the place. He paid Dean his bill for these two men Gordon and Ridley. The sheriff took the prisoners in the team in which we came out and drove ahead of us to Rosewood on the railroad, Clyatt, Taylor and myself following behind on foot. We overtook a wagon and asked the driver for permission to ride. He consented and we drove along behind, but not in sight of the deputy sheriff. The wagon went in an ordinary pace until we heard the coming of the train. The driver trotted the team of mules for two or three hundred yards to the station. The sheriff told Clyatt that his prisoners wanted to go with him to Georgia instead of being locked up in the Bronson jail. Clyatt said, all right, if they wanted to go, he would carry them. I went into the second-class coach where the men were seated still with the hand-cuffs on. Between Rosewood and Gainesville, I got the key to the cuffs and turned the men loose, but kept a watch on them.

Every time the train stopped looked to see that they did not get off. We were at Gainesville about two or three hours, and Clyatt, Taylor and myself went to a restaurant and got dinner; did not register at any hotel. When we got back to the station at Gainesville to take the train Gordon and Ridley went on with us, they in the colored coach and we in the white coach. At Jasper we stopped at night to change cars and get supper for an hour or two. Gordon and Ridley were not kept under watch and were free to go as they pleased while at Jasper. They met us after we had had supper and we went on to Tifton, arriving there between twelve and one o'clock at night. I went with Clyatt to his house in Tifton, and spent the night there, and I left about day-light the next morning for my home. I never saw Gordon or Ridley any more after they got off the train at Tifton, and we took them to defendant's house. I do not know who paid their fare to Gainesville; did not see any tickets bought. I bought and paid for the tickets for one of them myself from Gainesville to Jasper or Tifton. I never charged or received any money for my expenses on the trip or for money paid for the tickets. I do not now work for Clyatt. I am not related to him. My wife is his niece. I know one Davis, who, in February, 1901, was working for Mr. Dean in Levy county, Fla. I think he was a woods rider for Mr. Dean. I heard that he and Mr. Clyatt had had a personal difficulty some time before in Georgia, about some hands. And I heard Mr. Clyatt say that he had been informed that Dean and Davis said they were going to do him up when they caught him in Florida, and it was for the purpose of seeing that Clyatt was not imposed upon that Taylor and I went with him and carried our guns.

To the court, who asked the witnees if he did not know he was going for hands, and that he went for the hands, witness said: "Yes;" and immediately said that his going, and going armed, was because of the expected difficulty with Davis. He saw Davis passing at a distance while he was at the commissary at Dean's still, but had no talk with him.

Neither the defendant, Clyatt, or Taylor, who was with us, or myself were officers.

Whereupon the plaintiff rests its case.
Defendant rests—introduces no testimony.

And the said judge, after charging the jury on the law in the case, submitted the said issues and the evidence so given on the trial, to the jury, and the jury aforesaid then and there gave their verdict for the plaintiff in the words and figures following, to-wit:

We, the jury, find the defendant guilty. So say we all.
(Signed) W. C. DURHAM, *Foreman.*

And the said defendant, by his attorneys, then and there at the term of the court aforesaid, did enter in writing and submit to the

said court his motion to arrest the judgment in this cause, and that he be discharged and allowed to go without day, on the following grounds, to-wit:

1. That the statutes under which the indictment is found, to-wit: secs. 1990 and 5526, of the Revised Statutes of the United States, do — apply to the charges made against this defendant in the indictment; or to the evidence in support of the same.

2. That there was no proof whatever of any peonage previous to or subsequent to the finding of the indictment, on Moses Ridley or Will Gordon inflicted, or caused to be inflicted by this defendant, supporting the offense of peonage as charged in the indictment.

3. That the offense of peonage, as defined in the statutes, and the punishment therefor, as defined and provided in the sections 1990 and 5526 of the Revised Statutes of the United States, if constitutional, which is denied, was never made applicable to the facts stated and proven in this indictment, and such offenses as were proven are cognizable only in the State courts. No Federal jurisdiction appears in this cause.

4. No system of peonage is charged, or proven, to have been in existence within this jurisdiction.

5. The proof of an existing custom not charged in the indictment to exist in Levy county, Florida, or in any other locality, could not supply the absence of any proof as to the return of Gordon and Ridley to a condition of involuntary servitude.

And the said motion coming on to be heard on the — day of March, A. D. 1902, at the term aforesaid, the said court did consider and decide that the said motion should not be granted.

To which decision the said defendant, by his attorneys, did then and there except.

And the said defendant, by his attorneys, then and there at the terms of the court aforesaid, did enter in writing and submit to the said court his motion for a new trial, for the reasons following, to-wit:

1. The verdict was contrary to the evidence.

2. Was contrary to the weight of evidence.

3. That the verdict was without evidence to support the same.

4. That the statute, to-wit: section 1990 of the Revised Statutes of the United States is not applicable to the facts as testified to in this cause.

5. That there was no proof that the named Will Gordon and Mose Ridley prior to the time alleged in said indictment, to-wit: on the 11th day of February, 1901, had ever been held to service under the system known as peonage, or that they, or either of them, had before then, or ever afterwards, been held to service under the system, by the acts or connivance of this defendant.

6. That there is no proof that the above Gordon or Ridley, or either of them, were ever by this defendant subjected to either vol-

untary or involuntary service or labor as peons in liquidation of any debt or obligation, in any manner by this defendant.

7. The court erred in holding that the defendant was liable for or on any account under the statutes.

8. That the court erred in allowing testimony as to the custom, generally, by others engaged in the same business, to-wit: the manufacture of naval stores, to compel laborers to return to their service in liquidation of pre-existing debts.

9. That the court erred in permitting the United States attorney to discredit his own witnesses. As in allowing him to prove that the firm of Clyatt & Tift embraced also this defendant.

10. That the court also erred in permitting evidence that it was not the intention of the Deputy Sheriff Yearty to have taken his prisoners, Will Gordon and Mose Ridley, to the county jail at Bronson to be dealt with under the warrant held by him for their arrest, and that he would have done so but for their voluntary election to return with the defendont to the town out of which the warrants issued charging them with the offenses of gaming or larceny, one or both.

11. That there is no evidence whatever that the said Will Gordon or Mose Ridley, or either of them, ever returned to service with this defendant, or upon any service with which he was connected.

12. That the proof was in no way confined to the indictment.

And the said motion coming on to be heard on the 27th day of March, A. D. 1902, and after the motion in arrest of judgment was heard and over-ruled, and at the term aforesaid, the said court did consider and decide that the said motion should not be granted.

To which decisiou the said defendant, by his attorneys, did then and there except.

Whereupon, the court aforesaid, on the 27th day of March, A. D. 1902, at the term aforesaid, did pronounce sentence against the said defendant, and did sentence him to the Federal penitentiary at Atlanta, State of Georgia, there to be confined at hard labor for the full period of four years from the 27th day of March, A. D. 1902, as appears of record; and inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record of the verdict and judgment aforesaid, the said defendant, by his attorneys aforesaid, did on the — day of April, A. D. 1902, by virtue of a special order herein made during the term aforesaid, propose this his bill of exceptions to the said entries and decisions of the said judge, and request him to sign the same; which is done this the 14th day of April, A. D. 1902.

CHAS. SWAYNE,
Judge of the United States Circuit Court,
Fifth Circuit, Northern District of Florida.

(Indorsements): In the circuit court of the United States, fifth circuit, northern district of Florida. United States *vs.* S. M. Clyatt. Bill of exceptions. Filed April 17th, 1902. F. W. Marsh, clerk.

On the 27th day of March, A. D. 1902, a citation was duly issued and service thereon duly accepted by the United States through John Eagan, United States attorney for the northern district of Florida, and is in the words and figures following, to-wit:

To the United States of America:

You are hereby cited and admonished to be and appear at a term of the circuit court of appeals of the United States, for the fifth judicial circuit, to be holden at New Orleans on the twenty-fifth day of April, A. D. 1902, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Florida, at Tallahassee, wherein Samuel M. Clyatt is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment and sentence mentioned in said writ of error should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of this court on this 27th day of March, A. D. 1902.

Signed this 27th day of March, A. D. 1902.

[SEAL.] CHAS SWAYNE, *Judge.*

(Indorsed:) Samuel M. Clyatt, plaintiff in error, *vs.* The United States. Citation. Filed March 27th, A. D. 1902. F. W. Marsh, clerk. Service accepted this March 27th, A. D. 1902. John Eagan, U. S. attorney.

UNITED STATES
vs.
SAMUEL M. CLYATT.

To the judge of the circuit court of the United States for the northern district of Florida, Greeting:

Because in the record of the proceedings, as also in the rendition of the judgment and sentence which is in said circuit court before you, between the United States and the said defendant a manifest error hath happened to the great damage of the said Samuel M. Clyatt, defendant, as is, and appears in the proceedings hereof.

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then and under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the justices of the United States circuit court of appeals, for the fifth judicial circuit, at the court room of said court, in the city of New Orleans, in the State of Louisiana, together with this writ, so that you have the same at said place before the justices aforesaid on the twenty-fifth day of April, A. D. 1902, next, that the record

and proceedings aforesaid being inspected the said justices of the said circuit court of appeals may cause further to be done therein to correct that error, what of right, according to law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27th day of March, in the year of our Lord one thousand nine hundred and two.

[SEAL.] F. W. MARSH,
Clerk of the Circuit Court of the United States of America for the Northern District of Florida, in the Fifth Judicial Circuit.

The foregoing writ of error was duly served on the day and date upon which it was issued, to-wit: on the 27th day of March, A. D. 1902, by lodging and filing with F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, for the defendant in error, a duly certified copy thereof.

[SEAL.] F. W. MARSH, *Clerk.*

(*Clerk's Certificate.*)

UNITED STATES OF AMERICA, }
Northern District of Florida. }

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from one to twenty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in the circuit court of the United States for the northern district of Florida in the cause of The United States against Samuel M. Clyatt, and wherein Samuel M. Clyatt is plaintiff in error, and The United States is defendant in error, as the same remains of record and on file in said court.

In testimony whereof, I have caused the seal of said court to be hereunto affixed at the city of Pensacola, in the said district aforesaid, this 17th day of April, in the year of our Lord one thousand nine hundred and one.

[SEAL.] F. W. MARSH, *Clerk.*

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1903.

MARCH 15, 1904.

(Extract from minutes.)

Ordered that the Honorable Thomas S. Maxey, U. S. district judge for the western district of Texas, and Honorable Thomas G. Jones U. S. district judge for the northern and middle districts of Alabama,

be, and they are hereby, designated to sit on the hearing and determination of the following cases, viz:

* * * * * * *

S. M. CLYATT
vs.
THE UNITED STATES. } No. 1151.

November term, 1903.

MARCH 16, 1904.

(Extract from minutes.)

S. M. CLYATT
vs.
THE UNITED STATES. } No. 1151.

On this day this cause was regularly called, and after argument by W. M. Hammond, Esq., and Lionel Adams, Esq., for plaintiff in error, and W. W. Howe, Esq., for defendant in error, was continued for further hearing until tomorrow.

November term, 1903.

MARCH 17, 1904.

(Extract from minutes.)

S. M. CLYATT
vs.
THE UNITED STATES. } No. 1151.

On this day this cause was called for further hearing, and after argument by Lionel Adams, Esq., for plaintiff in error, was submitted to the court.

November term, 1903.

MARCH 29, 1904.

(Extract from minutes.)

SAMUEL M. CLYATT
vs.
THE UNITED STATES. } No. 1151.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Florida, and was argued by counsel.

Whereupon, the court desiring the instruction of the honorable, the Supreme Court of the United States for the proper decision of the matters pending in this cause, orders that the following three

questions and propositions of law be certified to the said Supreme Court in accordance with the provisions of sec. 6 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the circuit courts of the United States and for other purposes; approved March 3, 1891, to-wit:

1. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States?

2. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States when at the time of the arrest and return of such person, there existed in the State to which he was returned to be so held no statute of the State or usage therein creating or sanctioning peonage or a system of peonage.

3. Do the acts and conduct of the defendant as charged in the indictment constitute the offence of holding, arresting or returning to a condition of peonage within the purview of sec. 5526 of the Revised Statutes?

And it is further ordered that a printed copy of the transcript of the record in the above styled and numbered cause, properly identified by the clerk of this court, be transmitted with the certificate herein.

Filed March 29, 1904. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

SAMUEL M. CLYATT, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error. } No. 1151.

Error to the circuit court of the United States for the northern district of Florida.

Before Shelby, circuit judge, and Maxey and Jones, district judges.

Statement of the Case.

On November 21, 1901, at a term of the United States circuit court for the northern district of Florida, the grand jury of that court, duly sworn and organized, found and presented the following indictment:

"In the Circuit Court of the United States for the Northern District of Florida, in the Fifth Judicial Circuit.

"The grand jurors of the United States of America, empaneled

and sworn within and for the district aforesaid, on their oaths present, that one Samuel M. Clyatt, heretofore, to-wit: on the eleventh day of February, in the year of our Lord, one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid, and within the jurisdiction of this court, did, then and there, unlawfully and knowingly return one Will Gordon and one Mose Ridley *to a condition* of peonage, by forcibly and against the will of them, the said Will Gordon and the said Mose Ridley returning them the said Will Gordon and Mose Ridley to work to and for Samuel M. Clyatt, D. T. Clyatt and H. H. Tift, co-partners doing business under the firm name and style of Clyatt and Tift, to be held by them the said Clyatt & Tift to work out a debt claimed to be due to them, the said Clyatt & Tift, by the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

"2nd. And the grand jurors aforesaid, on their oaths aforesaid, do further present, that one, Samuel M. Clyatt, heretofore, to-wit: on the eleventh day of February, in the year of our Lord one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid and within the jurisdiction of this court, did, then and there, unlawfully and knowingly cause and aid to be returned Will Gordon and Mose Ridley to a condition of peonage, by forcibly and against the will of them, the said Will Gordon and Mose Ridley, causing and aiding them the said Will Gordon and Mose Ridley to be returned to work to and for Samuel M. Clyatt, D. T. Clyatt and H. H. Tift, co-partners doing business under the firm name and style of Clyatt & Tift to work out a debt claimed to be due to them the said Clyatt & Tift by them, the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

"JOHN EAGAN,
United States Attorney."

"Indorsements: A true bill, Edward B. Eppes, foreman."

The defendant, Samuel M. Clyatt, was brought to the bar, and after hearing the indictment read, pleaded "Not guilty." Whereupon, a jury was duly empaneled, and after hearing the evidence, argument of counsel and charges of the court, returned the following verdict: "We, the jury, find the defendant guilty, so say we all." Whereupon, the defendant Samuel M. Clyatt was remanded to jail to await the further order of the court.

After verdict, and before sentence, the defendant, by his attorneys, moved the court to arrest the judgment, and that he be discharged and allowed to go without delay, on the following grounds:

"1st. That the statute under which this indictment is found, to-wit: section- 1990 and 5526 of the Revised Statutes of the United States, do- not apply to the charges made against this defendant in the indictment or to the evidence in support of the same.

"2nd. That there was no proof whatever of any peonage previous to, or subsequent to the finding of the indictment, on Mose Ridley or Will Gordon inflicted or caused to be inflicted by this defendant, supporting the offense of peonage as charged in this indictment.

"3rd. That the offense of peonage as defined in the statute and the punishment therefor as defined and provided in the sections 1990 and 5526 of the Revised Statutes of the United States, if constitutional, which is denied, was never made applicable to the fact stated and proven in the indictment and such offenses as were proven are cognizable only in the State courts, no Federal jurisdiction appears in this cause.

"4th. No system of peonage is charged or proven to have been in evidence within this jurisdiction.

"5th. The proof of an existing custom not charged in the indictment to exist in Levy county, Florida, or in any other locality, could not supply the absence of any proof as to the return of Gordon and Ridley to a condition of involuntary servitude."

After hearing the motion, the circuit court made the following order: "The United States *vs.* Samuel M. Clyatt. Peonage. The motion in arrest of judgment by the defendant is hereby overruled."

And, thereupon, on March 27, 1902, the circuit court entered the following judgment: "The United States *vs.* Samuel M. Clyatt. Indictment, violation section 5526 Rev. Statutes of U. S.

"And now at this time came the United States, by John Eagan, United States district attorney for the northern district of Florida, who prayed the judgment of the court upon one Samuel M. Clyatt, heretofore convicted before this court of a violation of section 5526 of the Revised Statutes of the United States, and the said defendant being brought into court, and the court being fully advised in the premises, ordered the said defendant to the bar of the court and imposed the following sentence:

"It is ordered and adjudged that the said defendant, Samuel M. Clyatt be taken hence to the Federal penitentiary at Atlanta, in the State of Georgia, and there confined at hard labor for the full term and period of four years from the 27th day of March, A. D. 1902, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law."

And afterwards, on March 27, 1902, defendant Samuel M. Clyatt by his attorneys, duly applied for and obtained a writ of error to the United States circuit court of appeals for the fifth circuit, and made the following assignment of errors.

"Comes now the defendant, Samuel M. Clyatt, and makes the following assignment of errors:

"1. The court erred in overruling the motion of defendant for the arrest of the judgment in this cause upon the several grounds alleged therein.

* * * * * * *

"3. Sections 1990 and 5526 of the Revised Statutes of the United States, under which the defendant was tried and convicted, are not applicable to this case. There is no allegation or proof of the existence of any system of peonage anywhere in the States of Florida or Georgia.

"4. There is no allegation that any act, law resolution, orders, regulations or usages, which had been before established, maintained or enforced, is charged in the indictment or that by virtue of any of these an attempt has been made in this case to established, maintain, and enforce, directly or indirectly, the voluntary or involuntary service or labor of any person as peons in liquidation of any debt or obligation, or otherwise, and there is no proof against this defendant of having done so, or of having assisted in the arrest or return of Gordon and Ridley to any condition of peonage.

"5. The statutes were made and intended to be applied to a system in existence in the Territory of New Mexico and not extended to any State wherein the system then existing in New Mexico did not obtain."

Thereafter the circuit court made an order granting the defendant leave to file a supersedeas bond in said cause. The bond was duly filed and approved.

This cause having come on for hearing in this court, was argued by the attorneys for the plaintiff in error and by attorneys for the United States; whereupon, this court, desiring the instruction of the honorable Supreme Court of the United States for proper decision of the matters pending, certifies to said Supreme Court the following questions, to-wit:

1. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States?

2. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States when at the time of the arrest and return of such person, there existed in the State to which he was returned to be so held no statute of the State or usage therein creating or sanctioning peonage or a system of peonage.

3. Do the acts and conduct of the defendant as charged in the indictment constitute the offence of holding, arresting or returning to a condition of peonage within the purview of sec. 5526 of the Revised Statutes?

For further certainty and information a printed copy of the transcript is transmitted with this certificate.

United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 34 pages, numbered from *a* to 33, inclusive, contain a true copy of the record and all proceedings had, including statement and questions certified, in the case of Samuel M. Clyatt, plaintiff in error, *versus* The United States, defendant in error, No. 1151, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 23rd day of May, A. D. 1904.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. ~~659~~. 235.

SAMUEL M. CLYATT

vs.

THE UNITED STATES.

UPON CERTIFICATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR AN ORDER TO SEND UP ENTIRE RECORD.

W. G. BRANTLEY,
Counsel for Samuel M. Clyatt.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10961

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 659.

SAMUEL M. CLYATT

vs.

THE UNITED STATES.

UPON CERTIFICATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR AN ORDER TO SEND UP ENTIRE RECORD.

Now comes said Samuel M. Clyatt, by his counsel, and moves for an order of this honorable court, directed to the honorable judges of the United States circuit court of appeals for the fifth circuit, commanding said judges to forthwith transmit to this honorable court the entire record and proceedings in said cause, so that this honorable court may act thereon as of right and according to the law ought to be done.

Said cause being before this honorable court on a certifi-

cate for instructions, the entire record should be brought up, for the following reasons:

1st. Because, in order to answer the first and third questions propounded by the honorable court of appeals, this honorable court should know to what State these questions relate. The indictment in this case would clearly indicate that the State of Florida is the State referred to, while the record will show that the evidence offered by the Government and on which the plaintiff in error was convicted all relate to the State of Georgia as the State to which the parties named in the indictment were returned to be held in an alleged condition of peonage.

2d. Because the third question propounded cannot be answered in the absence of the record showing what were the acts and conduct of the plaintiff in error that were held by the honorable district court to constitute "returning to a condition of peonage," as charged in the indictment.

3d. Because each of the three questions propounded by the honorable circuit court of appeals purports to be limited to section 5526 of the Revised Statutes, while the motion of the honorable Attorney General to advance the hearing recites that the plaintiff in error was convicted of violating sections 1990 and 5526 of the Revised Statutes, and in order that a correct understanding of the questions may be had and this honorable court may determine whether the record upon which the defendant was convicted shows or sets forth matter constituting a violation of sections 1990 and 5526 of the Revised Statutes, or either of them, within the meaning of the same, the entire record should be before this court for its inspection.

4th. Because neither section 5526 nor 1990 defines a "system of peonage" or a "condition of peonage," and therefore it is necessary to a correct understanding of each of the ques-

tions to know in detail the acts and conduct of the plaintiff in error, so that this honorable court may determine whether the same constituted a violation of the law of the United States "within the meaning" of section 5526, as inquired by the circuit court of appeals.

5th. Because a correct understanding of the true intent and meaning of sections 5526 and 1990 cannot be had without construing the act of Congress, approved March 2, 1867, entitled "An act to abolish and to forever prohibit the system of peonage in the Territory of New Mexico and other parts of the United States," from which act the said two sections were taken; and, in construing this act, its applicability or non-applicability to the acts and conduct of the plaintiff in error and its pertinency to the questions propounded can only appear by reference to the entire record in said cause.

6th. Because the indictment, which is before the court, charges the plaintiff in error with returning and causing and aiding to be returned to a condition of peonage certain parties named therein, and the questions propounded each relating to this alleged condition of peonage, it is necessary to a correct understanding of the questions to know what the condition of these parties named in the indictment was prior to and subsequent to their being so returned to it, and this condition can only be ascertained by reference to the entire record.

7th. Because the questions propounded are new and important, and in order that their full force and meaning may be fully comprehended, all the facts prompting and suggesting them should be before this court.

8th. Because the entire record is short, as is here to the court shown, and the plaintiff in error believes it is necessary to the complete vindication of his rights that the same should

be considered in connection with the questions propounded by the honorable circuit court of appeals, and likewise believes that in the interest of justice the whole record and cause should be laid before this honorable court and the whole matter in controversy decided in the same manner as if it had been brought up for review by writ of error or appeal.

9th. Because the facts that were in evidence on the trial had in the United States circuit court for the northern district of Florida were by direction of the then United States district attorney for said district included in and made a part of the record as transmitted to the United States circuit court of appeals and were freely discussed and treated as a part of the record both by the United States district attorney and by the attorneys for plaintiff in error in argument before the circuit court of appeals, and were necessarily considered by said circuit court in connection with all other questions raised upon the record, and plaintiff in error submits that it is indispensable to a clear and proper apprehension by this honorable court of the acts and conduct referred to in the "certificate for instructions" that all the evidence touching the same be considered, to the end that the applicability of the act of Congress of March 2, 1867, to the acts and conduct of plaintiff in error may be rightly determined.

10th. Because for a full understanding of the questions propounded by the circuit court of appeals, and for a proper decision by said court of the matter pending before it, it is desirable that a transcript of the entire record in that court should be open to the inspection of this honorable court.

A certified copy of the entire record accompanies this motion.

Respectfully submitted.

W. G. BRANTLEY,
Counsel for Samuel M. Clyatt.

To the HONORABLE ATTORNEY GENERAL OF THE UNITED STATES:

Please take notice that on Tuesday, the 31st day of May, 1904, at the opening of the court, or as soon thereafter as counsel can be heard, the foregoing motion will be submitted to the Supreme Court of the United States for the decision of the court thereon.

Annexed hereto is a copy of said motion and reasons in support of same.

W. G. BRANTLEY,
Counsel for Samuel M. Clyatt.

Service of the foregoing motion and copy of same acknowledged this 24th day of May, 1904.

M. D. PURDY,
Assistant Attorney General.